

Appl. No. : 10/632,573  
Filed : August 1, 2003

## **REMARKS**

### **Amendments to the Claims and Specification**

Claims have been amended.

Applicants respectfully submit that the amendments add no new matter and are fully supported by the application as originally filed.

### **Newly Added**

New Claims 24-26 have been added.

### **Claim Objections**

### **Rejections under 35 U.S.C. §112**

The Examiner has rejected Claim 23 under 35 U.S.C. §112, first paragraph, for failing to comply with the written description. The Examiner maintains that the original disclosure fails to support the claim limitation "to require disinfection of *Staphylococcus aureus* within 30 seconds". The Applicant submits that paragraph [104] of the specification and TABLE 3 of the original disclosure supports the time limitation of Claim 23.

The Examiner has rejected Claim 23 under 35 U.S.C. §112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. Claim 23 has been amended to clarify what is included or excluded. Claim 23 excludes hypochlorite wipes that do not provide disinfection against *Staphylococcus aureus* within 30 seconds on surfaces selected from the group consisting of countertops, floors, beds, walls, doorknobs, toilet seats, and combinations thereof.

Accordingly, the rejection of the Claim 23 under §112 should be reconsidered and withdrawn.

### **Rejections under 35 U.S.C. §103(a)**

Rejection of Claims 1-5, 9-16, and 20-23 with regard to Guthrie et al., WO 01/92633 A1 in view of Lister U.S. Patent No. 5,087,450 and Win et al., U.S. Patent No. 4,833,003.

Appl. No. : 10/632,573  
Filed : August 1, 2003

The Examiner has rejected Claims 1-5, 9-16, and 20-23 under 35 U.S.C. §103(a) as being unpatentable over Guthrie et al., WO 01/92633 A1 in view of Lister U.S. Patent No. 5,087,450 and Win et al., U.S. Patent No. 4,833,003.

Independent Claim 12 has been amended to include the limitation “wherein said stability of the hypohalite releasing composition is measured with said disinfecting article stored in a container sealed from evaporation”. Claims 13-16 and 20-22 and new Claim 26 are dependent on Claim 12.

In the **Response to Arguments** from the Office Action of May 26, 2005, the Examiner states that “the claims do not require any sort of chemical stability that exceeds that of preventing evaporation of hypochlorite to maintain its activity.” Applicants note that Claim 12 has been amended to clarify the issue of chemical stability versus evaporation of water.

**There would be no expectation of success in combining the hypochlorite wipes of Lister with the anti-evaporation wipes of Guthrie and Win to achieve additional chemical stability of hypochlorite in wipes when they are stored in sealed containers.**

Applicants submit that Claim 1 refers to the chemical stability of the hypochlorite within the aqueous composition on the wipe and not the level of liquid remaining in the wipe. TABLE 2 [102] of the specification shows that the level of hypochlorite titrated **in the liquid** for the inventive wipes is much improved over the level of hypochlorite titrated **in the liquid** for the comparative wipe. **The wipes in TABLE 2 were stored in sealed containers and not subject to evaporation.** If the hypochlorite solution were allowed to evaporate, there would be no expectation that the concentration of hypochlorite **in the liquid** within the wipe would decrease, in fact, if anything it might be higher than expected as the water concentration decreases do to evaporation.

Guthrie and Win are concerned with and solve the problem of water evaporation or movement as liquid water from the interior of the wipe to outside the wipe. Guthrie and Win would only solve the problem of concentration of water within the wipe and not the problem of concentration of hypochlorite within the water solution. There is no teaching or suggestion in Guthrie or Win about how to increase the stability of hypochlorite **in the liquid**.

The Examiner combines references Guthrie, Lister and Win. It is well settled that in order for references to be properly combined, there must be a teaching in at least one of the references to suggest that the disclosure of any of the other references could be modified to produce the

Appl. No. : 10/632,573  
Filed : August 1, 2003

Applicant's claimed invention. *ACS Hospital System Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 (Fed. Cir. 1984); *Orthopedic Equipment Co. v. U.S.*, 217 U.S.P.Q. 193 (Fed. Cir. 1983). Additionally, absent some suggestion or incentive, the teachings of references may not be combined. *ACS, supra*, 229 U.S.P.Q. at 933, *In re Rinehart*, 189 U.S.P.Q. 143 (C.C.P.A. 1976).

Lister teaches a gauze pad impregnated with 10% sodium hypochlorite (col. 2, lines 54-59). The package prevents the loss or evaporation of the sodium hypochlorite that is impregnated in the gauze pad (col. 3, lines 10-12). There is no suggestion or incentive in the teachings of Lister to achieve chemical stability of the composition rather than just stability against leakage. Win, Guthrie, and Lister all teach methods to reduce evaporative or water loss.

Accordingly, the objection to Claims 1-5, 9-16, and 20-23 is overcome and it is respectfully urged that it be withdrawn.

**Rejection of Claim 23 with regard to Guthrie et al., WO 01/92633 A1 in view of Lister U.S. Patent No. 5,087,450 and Win et al., U.S. Patent No. 4,833,003.**

The Examiner has rejected Claim 23 over Guthrie et al., WO 01/92633 A1 in view of Lister U.S. Patent No. 5,087,450 and Win et al., U.S. Patent No. 4,833,003. Nowhere do Guthrie, Lister, or Win teach or suggest a hypochlorite wipe that provides disinfection against *Staphylococcus aureus* within 30 sec. The Applicant notes that a currently Commercial hypochlorite wipe does not provide such desirably disinfection efficacy. (see Table 3 in specification) Claim 23 has been amended in response to the Examiner's comments. New Claim 24 is dependent on Claim 23. New Claim 25 is a method claim with similar limitations to Claim 23. The applicant maintains that Claims 23-25 are in condition for allowance.

**Rejection of Claims 6-8 and 17-19 as being unpatentable over Guthrie et al., WO 01/92633 A1 together with Lister U.S. Patent No. 5,087,450 and Win et al., U.S. Patent No. 4,833,003 and further in view of Serego Allighieri et al., WO 99/52360.**

The Examiner has rejected Claims 6-8 and 17-19 under 35 U.S.C. §103(a) as being unpatentable over Guthrie et al., WO 01/92633 A1 together with Lister U.S. Patent No. 5,087,450 and Win et al., U.S. Patent No. 4,833,003 and further in view of Serego Allighieri et al., WO 99/52360. Applicant notes that Claim 12 has been amended. Claims 17-19 are dependent on Claim 12. As stated above, there is no suggestion or incentive in the teachings of Guthrie, Lister, or Win to achieve chemical stability of the composition. Serego Allighieri teaches the addition of a

Appl. No. : 10/632,573  
Filed : August 1, 2003

pH buffer which resists pH changes in the composition (page 20). There is no suggestion or incentive in the teachings of Serego Allighieri to achieve chemical stability of the composition. Accordingly, the objection to Claims 6-8 and 17-19 is overcome and it is respectfully urged that it be withdrawn.

#### **Rejection under Double Patenting**

The Examiner provisionally rejected Claims 1-23 under the doctrine of obvious-type double patenting as being unpatentable over claims 1-26 of copending Application No. 10/870,093. Once patentable subject matter is identified in the present patent application, Applicants will submit a Terminal Disclaimer to obviate any alleged obviousness-type double patenting rejection.

#### **CONCLUSIONS**

In view of the foregoing amendments and remarks, Applicants submit that the application is in condition for allowance. If, however, some issue remains, the Examiner is cordially invited to call the undersigned.

Please charge any additional fees, including fees for additional extensions of time, or credit overpayment to Deposit Account No. 03 2270.

Respectfully submitted,  
The Clorox Company  
Customer No. 27019

Dated: August 16, 2005

By: David Peterson  
David Peterson  
Registration No. 37909  
Attorney of Record  
The Clorox Company  
1221 Broadway  
Oakland, CA 94612  
(510) 271-7521